

(2009) 01 DEL CK 0166
In the Delhi High Court
Case No : LPA 2342 of 2006

Workmen of Power Grid Cor.		APPELLANT
	Vs	
Power Grid Corporation of India Ltd.		RESPONDENT

Date of Decision : 16-01-2009

Acts Referred:

Contract Act, 1872 — Section 29

Contract Labour (Regulation and Abolition) Act, 1970 — Section 7

Citation : (2009) 01 DEL CK 0166

Hon'ble Judges : A.P. Shah, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Sanjoy Ghose, for the Appellant; P.P. Malhotra, ASG, Pawan Upadhyay, Gaurav Sharma and Chetan Chawla, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment and order passed by the learned Single Judge in W.P.(C) No. 3070/2002 dated 21st November, 2006 whereby the award passed by the Industrial Tribunal-III in I.D. No. 19/1990 dated 9th November, 2002 directing absorption of the contract workman was quashed and set aside.

2. All 64 appellants before us were engaged by the respondent No. 2, Sentinel Securities Services Limited to work as security guards at the premises of the respondent No. 1, Power Grid Corporation of India Ltd for watch and ward and for fire protection and vigilance. The contract was initially for a period of 24 months with effect from 1st April, 1994, which was extended from time to time and finally expired on 31st March, 1999. Some of the workmen raised an industrial dispute alleging that the work being done by them was of a perennial nature and the contract entered into between the Corporation and the contractor was a camouflage and they were entitled for regularization in the respondent No. 1 Corporation. They pleaded that administrative control and supervision over them was that of the respondent No. 1 Corporation and, therefore, for all intents

and purposes, the security guards engaged by the contractor should be considered as employees of the respondent No. 1 Corporation.

3. By order dated 30th December, 1998, the Government of NCT of Delhi referred the dispute to the Industrial Tribunal-III, Delhi for adjudication. Another set of employees moved this Court in W.P.(C) No. 2875/1998 seeking similar relief. By order dated 5th May, 1999, the said writ petition was disposed of giving liberty to the writ petitioners to join and participate in the reference made by the Government by order dated 30th December, 1998 pending before the Industrial Tribunal-III.

4. The tribunal upon considering the evidence led by the parties came to the conclusion that the contract between the respondent No. 1 and the contractor was not a genuine contract and it was merely a camouflage. The tribunal based its conclusion about the contract being sham and camouflage mainly on the terms of the contract itself. The tribunal held that under Clause 4.1 of the contract the work was not limited to watch and ward and workmen could be given any other duty and thus the contract was uncertain and vague and was hit by Section 29 of the Indian Contract Act. Further, the tribunal held that Clause 4.1 of the contract shows that the management had overriding power and every activity was to be done as per the directions of the management from time to time, so the management had administrative control and supervision over the workmen. The tribunal also took note of the fact that the respondent No. 1 was not registered u/s 7 of the Contract Labour (Regulation and Abolition) Act, 1970 and that the contractor had a valid licence only for a period of one year and five months and that he was without licence from 1994 till 1st November, 1996. On the basis of the above findings, the tribunal held that all the employees of the contractor were liable to be treated as employees of the respondent Corporation in view of the law laid down by the Supreme Court in Steel Authority of India Ltd. Vs. Union of India (UOI) and Others,

5. Against the impugned award, the Corporation preferred W.P. (C) No. 3070/2002, which came to be allowed by the order under appeal. The learned single Judge came to the conclusion that the contract cannot be said to be camouflage or sham and the findings recorded about the services being provided by the contractor were completely unsustainable. The learned single Judge after detailed examination of the terms and conditions of the contract concluded as follows:

18. A perusal of the above provisions of the contract would show that the main and principal job of the guards was to protect the properties of the petitioner from theft, burglary, damage and from riots etc. Contractor was to provide safety cover to office premises and complex of the petitioner, not only from physical violation but also from fire and water. Guards were also supposed to help the petitioner/management in case of riots, labour unrest, strike. It is obvious that the petitioner could not take such services from its regular employees engaged in generation, transmission of electricity. If petitioner had employed persons for

such services as its own regular employees, they obviously could join hands with other employees at the time of strikes or riots and would not be able to protect the property, office furniture and other important documents of the petitioner from unruly labour. At the time of riots, the employees working in the establishment of the petitioner for the purpose of running its office and for the purpose of maintenance of transmission equipment would not like to risk their life and act like guards and protect the property from rioters or from terrorists" activities. Only a specialized security agency can do this work.

19. The Tribunal miserably misguided itself by only reading two phrases in the contract in isolation. In Clause 4.1 words "but not be limited" were used. A perusal of Clause 4.1 above would show that these words were used as a precautionary word, while enumerating the different duties so that any duty which could not be conceived at that time connected with security, the same was also to be done by the contractor. It is settled principal (sic) of interpretation of documents and deeds that phrases and words cannot be lifted out of context. Each phrase and word has to be interpreted keeping in view the entire contract and in the context of the entire contract. The management could not have asked the contractor's employees to run its office or to maintain the equipments installed in the office or to clean the office by taking shelter of the Clause 4.1. The management could have only assigned another work which was akin to the work of security.

20. The other Clause relied upon by the Tribunal is 4.1.16 which provides that "any other duty as may be assigned from time to time" to the contractor as the need arises. This Clause has also to be read ejusdem generis to the contract and cannot be read out of the context. Any other duty here only means duty connected with main object of the contract.

6. The learned single Judge further recorded a finding that the Government of NCT of Delhi was not the appropriate Government and, therefore, the reference was without jurisdiction. The learned single Judge held that in any event it was not a fit case for grant of regularization in view of the Constitution Bench judgment in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others,

7. We have heard Mr. Sanjoy Ghose, learned Counsel appearing for the appellant workmen and learned Additional Solicitor General Mr. P.P. Malhotra appearing for the respondent.

8. With the assistance of the learned Counsel for the parties, we have also gone through the relevant terms and conditions of the contract dated 1st April, 1994. The contract specifically contains amongst other, the following terms:

(a) that the contract was for a limited duration on the terms and conditions specified therein.

(b) that the Corporation was to make payment to the Contractor on monthly

basis for the actual deployment of the security personnel which might vary from time to time. (No direct payment has been made by the Corporation to the contract labour.)

(c) that the contractor was to submit a contract performance guarantee for an amount equivalent to 10% of the contract price in the form of bank guarantee in favour of the Corporation.

(d) that the contractor was to comply with all labour laws and contractor's liability applicable during the currency of the contract in respect of any employee or workman engaged by him.

(e) that in case of absence of deployed personnel, the substitute personnel was to be provided by the contractor without any additional liability to the Corporation.

(f) that the strength of contract labour was to increase or decrease depending on the exigencies of the services required.

(g) that the contractor was required to provide at his own cost to the contract labour all materials, accessories and equipments including uniforms, kits, arms, canes etc.

(h) that the travelling expenses of the contract labour was to be borne by the contractor.

9. Now it has been clearly held by the Supreme Court in *Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another*, that the control as traditionally formulated has not been treated as an exclusive test. In this connection, a reference may also be made to the judgment of the Supreme Court in *Haldia Refinery Canteen Employees' Union v. I.O.C.L.* reported in 2005 (4) Scale 487. In that case the question arose as to whether the workmen of statutory canteen managed by a contractor would be workmen of the respondent management. The Court distinguishing its earlier decision in *Indian Petrochemicals Corporation Ltd. v. Shramik Sena* (1999) 6 SCC 431 held as follows:

14. No doubt, the respondent management does exercise effective control over the contractor on certain matters in regard to the running of the canteen but such control is being exercised to ensure that the canteen is run in an efficient manner and to provide wholesome and healthy food to the workmen of the establishment. This, however, does not mean that the employees working in the canteen have become the employees of the management.

15. A free hand has been given to the contractor with regard to the engagement of the employees working in the canteen. There is no Clause in the agreement stipulating that the canteen contractor unlike in the case of *Indian Petrochemicals Corporation Ltd.* shall retain and engage compulsorily the employees who were already working in the canteen under the previous

contractor. There is no stipulation of the contract that the employees working in the canteen at the time of the commencement of the contract must be retained by the contractor. The management unlike in Indian Petrochemicals Corporation Ltd. Case is not reimbursing the wages of the workmen engaged in the canteen. Rather the contractor has been made liable to pay provident fund contribution, leave salary, medical benefits to his employees and to observe statutory working hours. The contractor has also been made responsible for the proper maintenance of registers, records and accounts so far as compliance with any statutory provisions/obligations is concerned. A duty has been cast on the contractor to keep proper records pertaining to payment of wages, etc, and also for depositing the provident fund contributions with the authorities concerned. The contractor has been made liable to defend, indemnify and hold harmless the employer any liability or penalty which may be imposed by the Central, State or local authorities by reason of any violation by the contractor of such laws, regulations and also from all claims, suits or proceedings that may be brought against the management arising under or incidental to or by reason of the work provided/assigned under the contract brought by the employees of the contractor, third party or by the Central or State Government authorities.

16. The management has kept with it the right to test, interview or otherwise assess or determine the quality of the employees/workers with regard to their level of skills, knowledge, proficiency, capability etc so as to ensure that the employees/workers are competent and qualified and suitable for efficient performance of the work covered under the contract. This control has been kept by the management to keep a check over the quality of service provided to its employees. It has nothing to do with either the appointment or taking disciplinary action or dismissal or removal from service of the workmen working in the canteen. Only because the management exercises such control does not mean that the employees working in the canteen are the employees of the management. Such supervisory control is being exercised by the management to ensure that the workers employed are well qualified and capable of rendering proper service to the employees of the management.

17. ...Factors which persuaded this Court in Indian Petrochemicals Corporation Ltd. case to take the view that the workmen in that case were employees of the management are missing in the present case. No power vests in the management either to make the appointment or to take disciplinary action against the erring workmen and their dismissal or removal from service. The management is not reimbursing to the contractor the wages of the workmen. On these facts, it cannot be concluded that the contractor was nothing but an agent or a manager of the respondent working completely under the supervision and control of the management.

10. We have gone through the terms and conditions of the contract entered into between the Corporation and the contractor and in particular the following terms and conditions on which a lot of emphasis was laid by the tribunal to show the

extent of control exercised by the management over the contractor:

4.0 Scope of Work.

4.1 The scope of services to be provided by Security Agency shall include but not to limited to, the following:

4.1.1. Providing security coverage to protect the property of Power Grid at all times against theft, burglary, damage by unwanted elements, unauthorized removal of documents and property etc., from inside or outside the premises.

4.1.2. Providing safety cover to protect the office premises/complex and their contents from damage by fire or water and prevent waste of material.

4.1.3. Providing assistance to Power Grid in case of strikes, riots and labour unrest.

4.1.4. Manning security posts identified by Power Grid round the clock for performing watch and ward duties and such other duties as allocated by Power Grid management.

4.1.5. Assisting and actively participating in respect of unauthorized occupants/encroachments from the premises of the Power Grid.

4.1.6. Attending Guard Punching in Time Machine/Signing of attendance register to prevent and detect unauthorized punching/signing.

4.1.7. Maintaining liaison/with civil and police authorities of the Area/District where security coverage is being given.

4.1.8. Ensuring entry of the employees of the Power Grid/VIPs etc. into the Premises under all conditions including hindrance, dharnas, strikes and gherao etc., caused by any individual or group of persons.

4.1.9. Providing armed guards/escort for cash and or VIP as required.

4.1.10. Controlling the movement of employees and visitors in the office premises.

4.1.11. To take charge of keys for locking and unlocking of office premises wherever required.

4.1.12. Checking all incoming and outgoing goods and vehicles and maintaining their record.

4.1.13. Ensuring compliance of safety regulations including smoking restrictions and to assist as directed by Power Grid in prevention of accidents.

4.1.14. Recording all occurrences concerning the security in the Log Book for the information of Powergrid.

4.1.15. Ensuring that all fire fighting equipments are in the designated locations and in usable conditions.

4.1.16. Any other duty as may be assigned from time to time and as the need arises.

4.2 You will be providing round the clock security services at all duty points as instructed by our Officer-in-charge.

4.3. You will follow all Labour Regulation Act including applicability of Minimum Wages, Provident Fund etc., as declared by Delhi State Government from time to time.

4.4. It has been agreed that you will rotate the security guards at a fixed intervals of time about after six(6) months or as advised by Officer-in- Charge from time to time and authority for such decisions would be Manager(Admn.) Corporate Centre, New Delhi.

4.5. Your responsible officer will always be available at New Delhi who will have sufficient financial and administrative power to tackle the day to day problems.

4.6. (i) If your performance during the next 6(six) months is not found satisfactory, Powergrid shall have the right to terminate the contract without assigning any reasons.

4.6(ii) If the contractor commits default in complying with any terms and conditions, Powergrid shall be at liberty to terminate the contract and Powergrid shall be entitled to recover any damage, loss caused to it because of the acts of omission or the contract.

11. A perusal of the above provision of the contract would show that the main and principal job of the guards was to protect the properties of the Corporation from theft, burglary, damage and from riots etc. The contractor was to provide safety cover to office premises and complex of the Corporation, not only from physical violation but also from fire and water. Guards were also supposed to help the management in case of riots, labour unrest, strike etc. No doubt, the management does exercise effective control on the contractor on certain matters in regard to the security functions. This, however, does not mean that the security guards working in the establishment have become the employees of the management. We are in agreement with the learned single Judge that the tribunal has completely misconstrued the two terms appearing in the contract, namely, "but not be limited" and "any other duty as may be assigned from time to time" to arrive at a conclusion that the management had full administrative control and supervision over them. These terms are used only as a precautionary word while enumerating the different duties so that any duty which is connected with the main object of the contract can be assigned to the workmen. It is seen from the contract that the contractor has been made liable to pay provident fund contributions, leave salary, medical benefits to his employees and to observe statutory working hours. It was the responsibility of the contractor for the proper maintenance of the register, records and accounts so far as compliance with any statutory provisions/obligations is concerned. The contractor was to comply with

all labour laws and contractor's liability is applicable during the currency of the contract in respect of any employee or workman engaged by him. No power was vested in the management either to make appointment or to take disciplinary action against the erring workmen and their dismissal or removal from service. On these facts it cannot be concluded that the contractor was nothing but an agent or a manager of the management of the respondent ? Corporation working completely under the supervision and control of the management.

12. We are thus in agreement with the findings recorded by the learned single Judge that the contract in question was not sham or camouflage. We, however, hasten to add that we do not agree with certain sweeping observations made by the learned single Judge in paragraphs 16 and 17 of his judgment regarding the scope of the Indian Contract Act.

13. In view of our finding that the contract is not a sham and/or camouflage, it is not necessary for us to consider the question as to whether the Government of the National Capital Territory of Delhi was the appropriate Government or not. This question is expressly kept open. In the result, the appeal is dismissed with no order as to costs.